

City of Pompano Beach

LICENSE AGREEMENT

with

ETA NU Education Foundation, Inc

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THIS LICENSE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2018, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter “CITY”),

and

ETA NU EDUCATION FOUNDATION, INC., a Florida not for profit corporation (hereinafter “LICENSEE”).

WHEREAS, for the LICENSEE desires to utilize the CITY’s E. Pat Larkins Community Center (“Property”) to conduct a Black History Exhibition where residents will experience a showcase African American culture and concession of food.

WHEREAS, CITY has determined that entering into this Agreement with LICENSEE to provide Exhibition activities at the Property is in the best interest of the public; and

WHEREAS, CITY and LICENSEE desire to enter into this Agreement setting forth the parties’ mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, CITY and LICENSEE agree as follows.

**ARTICLE 1
REPRESENTATIONS**

A. **Representations of CITY.** CITY makes the following representations to LICENSEE, which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information supplied by CITY or by others authorized by the CITY’s Recreation Program Administrator.

B. **Representations of ETA NU Education Foundation, Inc.** LICENSEE makes the following representations to CITY, which CITY relies upon in entering into this Agreement.

1. ETA NU Education Foundation, Inc. is a Florida not for profit corporation duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSEE to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of ETA NU Education Foundation, Inc. is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting ETA NU Education Foundation, Inc. or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. CITY shall be entitled to rely upon the professional administrative, management and interpersonal skills of LICENSEE or others authorized by LICENSEE under this Agreement.

7. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its activities in a professional, reputable manner.

8. LICENSEE agrees to be bound by all terms, conditions, duties, obligations and specifications set forth in this Agreement.

ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING

A. This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity without prior written approval from CITY.

B. Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval shall result in CITY's

immediate cancellation of this Agreement. Specifically, no formal assignment of any right or obligation under this Agreement shall be binding on CITY without the formal written approval of the City Commission of Pompano Beach.

C. This Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of LICENSEE's insolvency or bankruptcy, CITY may, at its option, terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

D. Nothing herein shall be construed to create any personal liability on the part of CITY, its agents, officers or employees nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3 TERM AND RENEWAL

The term of this Agreement shall be for one (1) year period with no renewal option and shall only be effective for the specific dates provided for in this Article.

Set up for the Exhibition activities shall commence at 8:00 a.m. on the date listed below and clean up shall be complete by 11:00 p.m. on the date listed below.

Exhibition Dates

February 22, 2018 – February 25, 2018

If circumstances beyond the control of either party, such as those set forth in Article 19 herein, prevent or delay either party from timely performance of their obligations hereunder, both parties agree to cooperatively work together towards scheduling a reasonable alternative date.

ARTICLE 4 RECORDKEEPING, INSPECTION AUDIT AND PUBLIC RECORDS

A. LICENSEE shall act in accordance with the recordkeeping, inspection and audit procedures set forth in Exhibit D attached hereto and made a part hereof.

B. Public Records. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, LICENSEE shall:

1. Keep and maintain public records required by the CITY in order to perform the service;

2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the LICENSEE does not transfer the records to the CITY.

4. Upon termination of this Agreement, transfer, at no cost to the CITY, all public records in possession of the LICENSEE, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon termination of the Agreement, LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon termination of the Agreement, LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

5. Failure of the LICENSEE to provide the above-described public records to the CITY within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253,
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

ARTICLE 5 RESPONSIBILITIES OF LICENSEE

A. LICENSEE shall be authorized to utilize the Property depicted in Exhibit A to provide the Exhibition activities, which is attached hereto and made a part hereof. A minimum of

fourteen (14) days and prior to commencing any of the set up Exhibition activities under this Agreement, LICENSEE shall be required to obtain the written approval of both the CITY's Contract Administrator and other reviewing CITY departments of both the final Site Plan and Schedule of Events.

B. Protection of Property. LICENSEE shall take no action which would cause damage to the Property and, in this regard, shall place all booths, vendors, in locations which will not cause damage to the Property.

If any damage to the Property is caused by Exhibition activities, LICENSEE understands and agrees that CITY will perform any and all required remedial work and LICENSEE shall be required to reimburse CITY for same within two weeks of receipt of CITY's detailed written invoice for same.

C. Clean up of Property. LICENSEE shall be responsible for clean up of the Property and removal of all debris and trash during and after Exhibition activities in accordance with Article 3 above, including dismantling, clean up and removal of any booths, tents, supplies, equipment, display areas, or any other temporary facility.

D. City Booth. During the Exhibition activities, LICENSEE shall provide CITY a standard size booth in the main vendor tent or other mutually acceptable location for CITY's own use.

E. LICENSEE Responsible for all Contracts. LICENSEE agrees to be solely responsible for all contracts or agreements of any nature for the Exhibition activities. All contracts shall be negotiated by LICENSEE and secured at LICENSEE's sole expense. CITY shall not be named as a party in any contract and CITY shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Exhibition activities. LICENSEE represents and warrants that prior to the Exhibition activities, LICENSEE shall have secured all necessary performing rights and licenses.

In addition, LICENSEE shall ensure that all performance payments required to be made under such licenses are made promptly and appropriately paid.

F. Concession Rights. During Exhibition activities and to the extent permitted by law and City Code, LICENSEE shall have exclusive concessionaire rights on the Property.

G. Required Licenses and Permits. LICENSEE, at its own expense, shall obtain and provide CITY a copy of all licenses and permits required for the Exhibition activities on the Property a minimum of three (3) business days prior to set up. In particular, LICENSEE shall provide sanitary and food facilities in accordance with applicable laws and regulations of the Florida Department of Environmental Protection and the Broward County Health Department.

H. Compliance With all Laws. In the conduct of its activities under this License Agreement, LICENSEE shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations, including, but not limited to,

compliance with the Americans with Disabilities Act with respect to all ramping. Ignorance on LICENSEE's part shall in no way relieve LICENSEE from this responsibility. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County and the CITY.

I. Emergency Access. LICENSEE agrees to provide any and all emergency access required by the CITY and its employees for the safety and welfare of the community and those attending the Exhibition activities. If, in the course of LICENSEE's operations, CITY or its officers, agents and employees become aware of any condition on the Property which may be dangerous, upon being notified, LICENSEE shall immediately correct such condition or cease operations so as not to endanger persons or Property.

J. Waste and Recycling. LICENSEE shall ensure all waste from the Exhibition is placed in waste receptacles provided by the CITY. LICENSEE agrees to utilize its best efforts to recycle materials in the recycling containers provided by the CITY for this purpose.

K. LICENSEE, its subcontractors, vendor and other agents shall be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against their provision of goods and services under this Agreement.

L. LICENSEE is responsible for hiring and managing its own employees, all of which shall be a minimum of eighteen (18) years old, under LICENSEE's exclusive direction and control and not deemed agents or employees of the CITY.

M. LICENSEE shall be solely responsible for compensating its employees, representative and other agents and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons, including, but not limited to, provision of workers' compensation insurance and any other benefits required by law.

N. LICENSEE shall be responsible to ensure that all its employees, other agents or representatives are suitable in terms of general character, knowledge, ability, manner and conduct.

O. LICENSEE shall maintain, and be required to verify, that it operates a "Drug Free Workplace" as set forth in § 287.087, Florida Statutes.

P. LICENSEE shall utilize the Property exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Property to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

ARTICLE 6
RESPONSIBILITIES OF CITY

A. CITY shall conduct a final inspection immediately prior to the Exhibition activities each year to ensure that the locations of booths, vendors, etc. are in accordance with the final Site Plan approved by the CITY.

B. CITY shall provide sufficient waste and recycling receptacles for proper disposal of all waste and recycle materials resulting from Exhibition activities.

C. CITY shall furnish the supplies, equipment, facilities personnel and miscellaneous event expenses listed in Exhibit C attached hereto and made a part hereof.

ARTICLE 7
MISCELLANEOUS TERMS AND CONDITIONS

A. LICENSEE's Responsibility for Damage or Loss of CITY Property. A representative of the CITY and LICENSEE shall annually inspect and document by photographs the condition of the Property prior to set up and after cleanup of Exhibition activities. CITY expects the Property to be restored to the same condition which existed prior to set up of the Exhibition activities.

If the Property or any portion thereof, or any structure attached thereto, or any equipment, fixture, or other item located thereon, including the grass or asphalt, shall be destroyed, damaged, marred, altered, or physically changed during the term in any manner whatsoever, then CITY will take the necessary remedial action to cause such repair or replacement to occur and LICENSEE shall pay CITY for any such expenditures within two (2) weeks after receipt of CITY's written invoice for same.

B. No Leasehold: Property "As Is". LICENSEE and CITY intend this Agreement shall be a license and privilege and that no leasehold or other interest in the Property is conferred upon the LICENSEE hereunder. LICENSEE takes the Property in "as is" condition.

C. Articles Left on Premises. LICENSEE understands and agrees that the CITY shall not in any way be responsible for any personal Property of Exhibition patrons or LICENSEE, its LICENSEEs, sub-LICENSEEs, representative or other agents, which is left on the Property and that LICENSEE bears any and all risks of loss. Any article(s) remaining on the Property at the conclusion of Exhibition activities each year shall become the Property of the CITY.

D. CITY's Right to Make Improvements and Modify the Property. Throughout the term of this license and notwithstanding any other term or condition herein, CITY retains the right, in its sole discretion, to modify and reconfigure the Property. Specifically, both parties agree that the public right-of-way may be temporarily or permanently relocated, reconfigured, modified or closed at CITY's sole discretion. LICENSEE agrees to make adjustment to any such changes implemented by CITY.

**ARTICLE 8
INDEMNIFICATION OF CITY**

A. LICENSEE shall at all times indemnify, hold harmless and defend the CITY its officials, its authorized agents and employees hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly, indirectly or in connection with this agreement and with LICENSEE's officers, staff or other agents' actions, negligence or misconduct under this Agreement whether same occurs or the cause arises on or away from the Property except that LICENSEE shall not be liable under this Article for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. LICENSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LICENSEE. The parties agree that one percent (1%) of the value of the total in-kind benefits provided to LICENSEE by CITY, as set forth in Exhibit C shall constitute specific consideration to LICENSEE for the indemnification provided under this Article. These provisions shall survive expiration or early termination of this Agreement.

C. LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Property at the Property against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal Property placed at the Property and, with the exception of damages or loss suffered as a result of CITY's negligence, CITY is hereby expressly released and forever discharged from any and all liability for any loss, injury or damage to persons or Property which may be sustained by reason of LICENSEE's presence and occupancy at the Property.

D. The indemnification provisions of this Article shall survive the termination of this Agreement.

**ARTICLE 9
INSURANCE**

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit B attached hereto and made a part hereof and shall not commence operations under this Agreement until proof of insurance detailing the terms and provisions of coverage has been received and approved in writing by the CITY's Risk Manager, which approval shall not be unreasonably withheld.

**ARTICLE 10
INDEPENDENT LICENSEE**

Both CITY and LICENSEE agree that LICENSEE is an independent LICENSEE and not a CITY employee. CITY shall not be liable for any wages, salaries, debts, liabilities or other obligations for LICENSEE's employees, agents or other representatives performing obligations of LICENSEE hereunder. Except as otherwise provided hereunder, neither party is the agent of the other nor is authorized to act on behalf of the other in any matter.

**ARTICLE 11
DEFAULT AND DISPUTE RESOLUTION**

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice from the other in accordance with Article 14 herein.

If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with this Article.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties, which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default, as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, it shall be lawful for either party to immediately terminate this Agreement in addition to any other remedies provided by law.

The default and dispute resolution process described in this Article is non-exclusive and without prejudice to the right of either party to pursue other remedies available at law.

**ARTICLE 12
NO DISCRIMINATION**

During the performance of this Agreement, LICENSEE agrees not to discriminate against its or CITY's employees, LICENSEEs, subcontractors, or patrons of the Property, or in the solicitation or purchase of goods or services on the basis of race, color, religion, sex, age, national origin, ancestry, marital status, physical or mental disability, however, with justifiable

cause, LICENSEE maintains the right to refuse Exhibition patrons participation in Exhibition activities.

**ARTICLE 13
PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 14
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

Greg Harrison, City Manager
P.O. Drawer 1300
Pompano Beach, Florida 33061
greg.harrison@copbfl.com
954-786-4191 office
954-786-4504 fax

With a copy to:

Mark Beaudreau, Recreation Program Administrator
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4034 office
954-786-4113 fax

For LICENSEE:

Harry B. Harrell
P.O. Box 547
Pompano Beach, FL. 33061
954-445-1515
hharrel@comcast.net

**ARTICLE 15
GOVERNING LAW AND VENUE**

A. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 16
CONTRACT ADMINISTRATOR**

A. The CITY's Recreation Program Administrator or his written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

B. Harry B. Harrell shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 17
NO CONTINGENT FEE**

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 18
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 19
FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay

shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 20
WAIVER AND MODIFICATION**

A. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

B. CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

**ARTICLE 21
SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**ARTICLE 22
APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

**ARTICLE 23
ABSENCE OF CONFLICTS OF INTEREST**

Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

**ARTICLE 24
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 25
LICENSE NOT LEASE**

Both parties acknowledge and agree this Agreement shall not be deemed a lease of the Property but rather a license granted to LICENSEE by CITY to provide the Exhibition activities, including the sale of attendant food and beverages, under the conditions and purposes expressed herein and shall not be construed to be a license to engage in any other business upon the licensed premises.

**ARTICLE 26
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 27
TERMINATION**

A. Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 11 above or seek other remedies as provided hereunder or by law.

B. Termination for Convenience of City. Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to LICENSEE, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement for convenience whenever it determines that such termination is in the best interest of the CITY. If the Agreement is terminated for the CITY's convenience, the notice of termination to LICENSEE shall state so.

**ARTICLE 28
ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no

deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY

MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as CITY Manager and **ASCELETA HAMMOND** as CITY Clerk of the CITY of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

[Signature]
Print Name: Scott A. Moore

ETA NU EDUCATION FOUNDATION, INC., a
Florida not for profit corporation

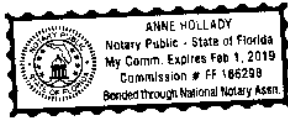
By: [Signature]
HARRY B. HARRELL

[Signature]
Print Name: Kurt Dwyer

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3 day of January, 2018, by Harry B. Harrell as a Director of ETA NU Education Foundation, Inc., a Florida not for profit corporation, on behalf of the corporation, who is personally known to me or who has produced (type of identification) as identification.

NOTARY'S SEAL:



Anne Hollady
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady
(Name of Acknowledger Typed, Printed or Stamped)

FF 166298
Commission Number